

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Kansas City Power and Light Company
Montrose Station
Clinton, Missouri

Respondent

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Docket No. RCRA-07-2003-0056

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Kansas City Power and Light Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, ("RCRA" or "the Act"), and the Hazardous and Solid

Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (C.S.R.), Chapter 25 (10 C.S.R. 25). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § (a)(2).

3. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated 40 C.F.R. §§ 262.11 and 12(c) and 10 C.S.R. 25-5.262(1).

Parties

4. The Complainant is the Director of the Air, RCRA, and Toxics Division of the EPA, Region VII, who has been duly delegated the authority to bring this action.

5. The Respondent is Kansas City Power and Light Company ("Respondent"), a company incorporated under the laws of and authorized to conduct business in the State of Missouri. Respondent's facility involved in this matter is the Montrose Station located at 400 S.W. Highway P, Clinton, Missouri.

Alleged Violations

6. Respondent is a Missouri corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7. Respondent's Montrose Station, located at 400 S.W. Highway P, Clinton, Missouri, is a facility which generates electricity. Respondent is a generator of solid waste including the paint debris generated as described below.

8. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), a generator of solid waste, as defined in 40 C.F.R. § 260.10, is required to determine if the solid waste is a hazardous waste.

9. Pursuant to 40 C.F.R. § 262.12(c), as incorporated by reference at 10 C.S.R. 25-5.262(1), a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

10. From on or about July 1, 1999 until on or about August 12, 1999, Respondent removed old paint from two turbines at the subject facility and disposed of the paint debris in the

general trash.

11. The paint debris was disposed of at the Ellis-Scott Sanitary Landfill in Clinton, Missouri.

12. On or about August 5, 1999, KCPL collected samples of the paint debris removed from the turbines. A Toxic Characteristic Leaching Procedure (TCLP) analysis was performed on the samples of the paint debris. The results of analysis were received on or about August 20, 1999. The leachate from the paint debris contained 65 mg/l of lead. A waste is considered to exhibit the hazardous characteristic of toxicity if the TCLP results are greater than 5 mg/l for lead.

13. On August 30, 1999, Respondent reported to the EPA the disposal of the paint debris pursuant to the provisions of the EPA's policy on self disclosure.

14. On or about September 10, 1999, Respondent placed approximately five pounds of paint chips in the general trash which was sent to the Ellis-Scott Sanitary Landfill.

15. On September 17, 1999, Respondent reported to the EPA the disposal of paint debris which occurred on or about September 10, 1999, pursuant to the provisions of the EPA's policy on self disclosure.

16. Respondent failed to conduct an adequate waste determination on the paint debris.

17. Respondent's failure to make an adequate hazardous waste determination is a violation of 10 C.S.R. 25-5.262(1), 40 C.F.R. § 262.11.

18. The paint debris was transported to the Ellis-Scott Sanitary Landfill by the Stewart Trash and Container. Ellis-Scott Sanitary Landfill does not have an EPA Identification Number nor is it authorized to manage hazardous waste. Stewart Trash and Container does not have an

EPA Identification Number nor is it authorized to manage hazardous waste.

19. Respondent's providing of hazardous waste to a transporter and a treatment/storage/disposal facility without an EPA Identification Number is in violation of 10 C.S.R. 25-5.262, 40 C.F.R. § 262.12(c).

CONSENT AGREEMENT

20. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

21. Respondent neither admits nor denies the factual allegations set forth above.

22. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

23. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

24. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

25. Respondent understands that the failure to pay any portion of the civic penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and based

upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Fourteen Thousand Three Hundred and Thirty-one Dollars and Fifty Cents (\$14,331.50), within thirty days of entry of this Final Order.

Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check should be sent to:

Kent Johnson
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in the Federal district Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By Kent Johnson
Kent Johnson
Assistant Regional Counsel

Date 1/17/03

RESPONDENT:
KANSAS CITY POWER & LIGHT
KANSAS CITY, MISSOURI

By Jamarcus Denny

Title PLANT MANAGER - MONTROSE

Date Jan. 2, 2003

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

By Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

Date January 12, 2003

IN THE MATTER OF Kansas City Power and Light Company
Docket No. RCRA-07-2003-0056

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

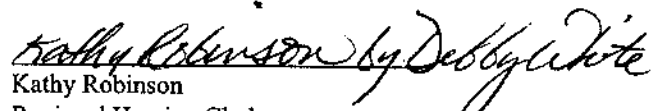
Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Michael Hochley
Spencer, Fane, Britt & Browne
1400 Commerce Bank Building
1000 Walnut Street
Kansas City, Missouri 64106

Dated: 01/23/03


Kathy Robinson
Regional Hearing Clerk